Supreme Court, U. S.
FILED
JAN 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

NO. 76-~~961~~ 891

JOHN T. CHAMBERS,

Petitioner,

V.

CHARLES A. CHAMBERS,
GRACE CHAMBERS KILLINGSWORTH,
CARL ANDREW CHAMBERS AND
THE STATE OF TEXAS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

SCOTT GARRISON
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

ATTORNEYS FOR
RESPONDENT
THE STATE OF TEXAS

TABLE OF CONTENTS

		Page
I.	STATEMENT	3
II.	CONCLUSION	3
III.	CERTIFICATE OF SERVICE	4

LIST OF AUTHORITIES

	Page
Bankston v. Scott, 216 S. W. 2nd 291 (Tex. Civ. App.-Galveston 1949 rehn den.)	3
Thurman v. Chandler, 81 S. W. 2nd 489 (Comm.-App., Section A, 1935) reversed and remanded	3
Weatherly v. Jackson, 71 S. W. 2nd 259 (Comm.-App., Section B, 1934)	3
Zapeta v. Hoffman, 72 S. W. 443 (Tex. Civ. App. 1903 no writ)	3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

JOHN T. CHAMBERS

Petitioner

VS. No. 76-981

CHARLES A. CHAMBERS,
GRACE CHAMBERS
KILLINGSWORTH,
CARL ANDREW CHAMBERS
AND THE STATE OF TEXAS

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

Respondent, State of Texas files this opposition to petition for writ of certiorari by petitioner and prays that such petition be denied as to the State of Texas and the 14.767 acre vacancy. Judgment and opinion of the Court of Civil Appeals for the Second Supreme Judicial District sitting at Fort Worth, Texas was entered on March 19, 1976. Motion for a rehearing was duly filed and overruled on the 16th day of April, 1976. Application for Writ of Error was filed with the Supreme Court of Texas and such application for Writ of Error for John T. Chambers was refused, no reversal error on July 21, 1976. Motion for a rehearing was duly filed and was overruled on September 29, 1976.

Respondent, State of Texas will address only those portions of the Brief in Petition for Writ of Certiorari which concern and are pertaining to the 14.767 acres claimed by the State of Texas for the reason that said

portion was never patented out of the State of Texas and therefore constitutes a vacancy. The portion of the judgment awarding the vacancy to the State of Texas is here quoted:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the State of Texas, by and through the Texas General Land Office, be and it is HEREBY AWARDED title and possession as prayed for in its Third Amended Original Answer and Counterclaim to the following described property which was never patented or severed from the State, to-wit:
>
> BEGINNING at the Northwest Corner of the Effie G. Rumph Survey, Abstract 2042;
>
> THENCE South 0 degrees 27 Minutes West 111.65 varas along West line of said E. G. Rumph to the Southwest Corner of Rumph Survey, a point in the North line of the B. R. ABBOTT SURVEY, Abstract 13;
>
> THENCE South 89 degrees 49 Minutes West 733.9 varas along the North line of said B. R. ABBOTT SURVEY to an "L" Corner of said Survey;
>
> THENCE North 0 degrees 14 Minutes East 115.77 varas along the most Northerly East Line of the B. R. ABBOTT SURVEY to a point in the South line of the Davie Russell Survey, Abstract 1323;
>
> THENCE South 90 degrees 52 Minutes East 733.46 varas along the South Line of said David Russell Survey to the place of BEGINNING and containing 14.767 acres of land, more or less."

STATEMENT

The jury found by their answer to Special Issue No. 13 that the 14.767 acres claimed to be a vacancy was not included within the description of the B. R. Abbott Survey. Thus title to that part of the B. R. Abbott Survey was never granted to claimants, and is now awarded to the State of Texas as shown by the above portion of the Judgment. The judgment as to the vacancy is in accordance with the jury's answer to Special Issue No. 13.

The jury's decision is decisive upon a question and the jury can give credence to testimony of one witness over that of another. *Thurman v. Chandler*, 81 S. W. 2nd 489 (Comm.App., Section A, 1935) reversed and remanded; *Bankston v. Scott*, 216 S. W. 2nd 291 (Tex. Civ. App.-Galveston 1949 reh. den.).

The question of adverse possession which arose between the other parties to the lawsuit had no bearing as to the state's claim of vacancy for the 14.767 acre tract. The rule that an individual cannot hold adversely against the State is basic. *Zapeta v. Hoffman*, 72 S. W. 443 (Tex. Civ. App. 1903 no writ) *Weatherly v. Jackson*, 71 S. W. 2nd 259 (Comm.App., Section B, 1934).

In conclusion, Respondent State of Texas urges that the decision of the jury to Special Issue No. 13 and the judge's rendition of judgment in accordance with same are entirely proper. Respondent prays that petition for Writ of Certiorari be denied as to the State of Texas and the 14.767 acre vacancy.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

SCOTT GARRISON
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

ATTORNEYS FOR
RESPONDENT
THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I, Scott Garrison, Assistant Attorney General of Texas hereby certify that a true and correct copy of the foregoing Brief In Opposition To Petition For Writ For Certiorari To The Supreme Court Of The State Of Texas has been deposited in the U.S. Mail, Certified, Return Receipt Requested, on this the ____day of January, 1977 to the following:

Phillip R. Russ
621 Meadows Building
Dallas, Texas 75206

William C. Odeneal, Jr.
621 Meadows Building
Dallas, Texas 75206

Oscar E. Reed, Esq.
12903 Tosca
Houston, Texas 77024

G.P. Reddell, Jr., Esq.
612 Sixth Avenue North
Texas City, Texas 77590

Obel L. McAlister, Esq.
3613 Overton Park East
Fort Worth, Texas 76109

Gerald Summerford, Esq.
200 West Belknap
Fort Worth, Texas 76102

William M. Jones, Esq.
1505 Elm Street
Dallas, Texas 75201

DATED AND SIGNED this ____ day of January, 1977 at Austin, Texas.

SCOTT GARRISON